IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1057 OF 2004

Rajendra J. Pandey & Anr. .. Petitioners

V/s

Managing Officer & Ors. .. Respondents

Mr.S.P. Kanuga for the Petitioners.

Mr.V.S. Mhaispurkar, A.G.P. for the Respondents.

CORAM : D.G. KARNIK, J.

DATE : 24TH APRIL 2007

P.C. :

1. Heard the counsel for the parties.

2. By this petition, the Petitioners challenge the order dated 25th September 2003 passed by the Authorized Chief Settlement Commissioner for Compensation Pool Properties-cum-Custodian and Evacuee Properties, Maharashtra State, Mumbai.

3. The Petitioners are the heirs of Jaishankar Pandey; the Petitioner No.1 being his son and the Petitioner No.2 being his widow. Jaishankar Pandey was in unauthorised occupation of the government land being part of CTS No.447, Nahur Village, Mumbai. Jaishankar Pandey / the Petitioners made an application for regularisation of unauthorised occupation under the provisions of Displaced Persons (Compensation and

Rehabilitation) Act, 1954 (for short "the Act"). As the application was not considered and decided, the Petitioners filed a writ petition being Writ Petition No.4000 of 2001, for a direction to the Respondents issue conveyance in respect of CTS No.447 (Part) in their occupation in accordance with the Act, or in the alternative to consider the Petitioners' application and pass a speaking order thereon. By an order dated 4th September 2001, Division Bench of this Court directed the Petitioners to file a fresh representation to the Managing Officer setting out their claim in detail and the Managing Officer was directed to dispose of the same in accordance with law, after giving opportunity to the Petitioners of being heard.

4. Pursuant to the directions issued in Writ Petition No.4000 of 2001 by this Court, the Petitioners made a representation to the Managing Officer-cum-Tahsildar, Kurla Rehabilitation. A copy of the said representation is not annexed to the present writ petition and even at the hearing, counsel for the Petitioners is unable to tender a copy thereof for my inspection. In the circumstances, it is not possible to know what were the contents of the Petitioners' representation. It is however common ground that the representation was for regularisation of the

unauthorised occupation of the Petitioners in respect of a part of CTS No.447.

5. After giving opportunity of hearing to the Petitioners, the Managing Officer, Mumbai City, Mumbai rejected the representation by his order dated 20th July 2002. Aggrieved Petitioners filed a revision petition before the Authorised Chief Settlement Commissioner - the Respondent No.2 herein. By the impugned order dated 25th September 2003, the Respondent No.2 partly allowed the revision application filed by the Petitioners. After reappreciation of evidence, the Respondent No.2 came to the conclusion that as on 6th August 1983 Jaishankar Pandey, the father of the Petitioner No.1, was in occupation of 196.7 sq.ms. (235.3 sq.yards) of the land out of CTS No.447, Nahur Village. He therefore held that the Petitioners were entitled for regularisation of their possession and conveyance of land to that extent.

6. Learned counsel for the Petitioners submitted that while the conclusion of the 2nd Respondent that the Petitioners were in possession of part of CTS No.447, Nahur Village, was correct the finding that the Petitioners, and prior to them the father of the Petitioner No.1, were in possession of only 196.7 sq.ms.

of land is factually incorrect. According to the Petitioners, they were in possession of land bearing CTS No.447 (part) admeasuring about 618 sq.ms.

7. The Petitioners have not produced before this Court any material to show that they were actually in possession of 618 sq.ms. out of CTS No.447. The finding recorded by the Respondent No.1 in Revision that Jaishankar Pandey, the father of the Petitioner No.1, was in possession of 196.7 sq.ms. of land out of CTS No.447, is a finding of fact. In my view, the said finding which is based on appreciation of evidence is clearly a possible finding of fact and cannot be said to be in any way perverse. The Petitioners have built some structures upon part of CTS No.447. The structures were measured and the area of structures has been taken into consideration by the 2nd Respondent. There is nothing on record to show that in addition to the structures, the Petitioners were in possession of any open area around or surrounding the said structures. In the facts and circumstances of the case and in exercise of writ jurisdiction, it is not possible to hold that the finding recorded by the 2nd Respondent about the area in occupation of the Petitioners is in any manner perverse.

8. For these reasons, there is no merit in the writ

petition which is hereby rejected.

(D.G. KARNIK, J.)